

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GUENTHER MARTENS, ET AL.,

Plaintiffs,
v.

06cv0737
Electronically Filed

ARIANA & NATHANIEL CONTRACTING, INC.,
ET AL.,

Defendants.

**ORDER OF COURT REGARDING PENDING
MOTIONS FOR SUMMARY JUDGMENT AND MOTION
TO AMEND ORDER APPOINTING SPECIAL MASTER**

On August 8, 2006, this Court entered an Order (doc. no. 34) appointing a Special Master and directing that a final hearing before the Special Master take place on or before April 16, 2007. The Order stated as follows:

Parties agree to a hearing on all claims (including the requested relief) before a single Special Master selected by the counsel/parties, pursuant to Rule 53 of the Federal Rules of Civil Procedure. If the selected Special Master cannot serve, the counsel/parties should agree on another person to serve as Special Master and if they cannot agree, the Special Master will be appointed by the Court.

The Special Master *shall hear and resolve all matters in controversy including the requested relief and any discovery disputes, and if requested by the parties, rule on any motion to dismiss and/or motion for summary judgment*, and shall issue a Report and Recommendation. Any party may file an appeal from such Report and Recommendation to this Court within ten days of its issuance, attaching a copy of said Report and Recommendation, which shall review the Report and Recommendation for plain error.

Order of Court dated August 1, 2006 (doc. no. 34) (emphasis added).

On that same date, the Court issued a Case Management Order ("CMO") (doc. no. 33) providing for discovery and the filing of dispositive motions, among other things. The dates of the CMO were enlarged at the request of the parties, with summary judgment motions due on

June 20, 2007, and responses thereto on July 20, 2007. (Text-only Orders of November 27, 2006 and June 27, 2007). These enlargements of the CMO necessitated enlargement of the hearing date before the Special Master. To that end, the parties filed a Joint Motion to Amend/ Correct the Order (doc. no. 129) to set a final hearing date before Special Master of August 31, 2007. The Court granted that motion by text-only Order on April 23, 2007, directing that the final hearing before the Special Master would take place on or before August 31, 2007.

Five defendants filed motions for summary judgment (docs. no. 131, 134, 138, 142, and 145) in June, 2007, and plaintiffs filed their oppositions on July 20, 2007. The parties have not requested the Special Master to hear and resolve these motions as was contemplated by the referral order. The parties have filed a Joint Motion to Amend Order Setting Date for Final Hearing Before Special Master (doc. no. 179), asking the Court to enlarge the date for final hearing by the Special Master for a date 90 days after this Court renders decisions on the motions for summary judgment.

The Court is of the view that it would be most efficient, and would be in the best interests of justice and the conservation of scarce judicial resources, especially in light of this Court's pending criminal calendar, that the parties refer the motions for summary judgment to the Special Master pursuant to the Report and Recommendation procedure, with right of appeal to this Court, as agreed to by the parties.

Accordingly,

IT IS HEREBY ORDERED that unless any party files a written objection on or before **November 7, 2007**, the parties shall provide a copy of this Order to the Special Master, who shall hear and resolve the pending motions for summary judgment, and shall issue a Report and Recommendation. Any party may file an appeal from such Report and Recommendation to this Court within ten days of its issuance.

IT IS FURTHER ORDERED that the Joint Motion to Amend Order Setting Date for Final Hearing Before Special Master (doc. no. 179) is GRANTED in part and DENIED in part. A final hearing before the Special Master shall take place within 90 days of disposition of the pending motions for summary judgment, and the parties shall file a Joint Status Report setting forth the disposition of said Final Hearing within ten days thereafter.

SO ORDERED this 31st day of October, 2007

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All ECF registered counsel